



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: CCO - 175689

PRELIMINARY RECITALS

Pursuant to a petition filed on July 19, 2016, under Wis. Admin. Code § HA 3.03, to review a decision by the La Crosse County Department of Human Services regarding Child Care (CC), a hearing was held on August 25, 2016, by telephone.

The issue for determination is whether the respondent correctly asserted an overissuance of CC benefits to petitioner.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, WI 53703

By: [REDACTED]

La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of La Crosse County.

2. Petitioner previously was the guardian, and later the foster parent, of a minor child, [REDACTED]. She was eligible for child care (CC) assistance for [REDACTED] without having her income included in the financial eligibility determination.
3. On July 21, 2015, petitioner adopted [REDACTED]. At that time, the agency was required to begin counting her income toward CC eligibility.
4. Petitioner did not report her adoption of [REDACTED] directly to the respondent.
5. For the period of July 26, 2015 – January 31, 2016, the county agency continued to certify petitioner eligible for CC and pay those benefits accordingly.
6. On June 28, 2016, the county agency issued a CC Overpayment Notification, asserting that petitioner had been overissued CC for the period of July 26, 2015 – January 31, 2016, based upon a failure to report she had adopted [REDACTED], which made her financially ineligible for CC.

DISCUSSION

When an individual is caring for foster children she will receive CC benefits without regard to her income, as the foster child's eligibility for CC is based upon the child's natural parent's income. *Wisconsin Shares Child Care Subsidy Policy Manual (Manual)*, Chapter 1.8.1. At the time the foster children are adopted and become the individual's own children, the income exclusion for foster children no longer applies and the household income must be counted in determining CC eligibility. The foster parent is required to report this change to the respondent, as the CC eligibility may be affected. See, *Manual*, Chapter 1.9.1.

Child Care overpayments are recoverable regardless of fault, whether accidental, negligent or intentional, on the part of the recipient or the agency. The *Manual*, Chapter 3.5.1 explains:

The Department and local agencies administering child care shall take all steps necessary to recover from the client, funds paid to the child care provider when the client was not eligible for the level of benefits paid.

Recover an overpayment from the client when they receive benefits for which they were not eligible, but not limited to, such as:

1. An authorized amount of child care would have been less due to inaccurate reporting of income. Consider the excess amount paid for the client as the overpayment.
2. The client was absent from a W-2 approved activity without good cause, while the child was in care. (The W-2 Financial & Employment Planner (FEP) determines good cause for absence from W-2 activities on a case by case basis.)
3. The client would not have been eligible if income, household composition, or the need for child care had been accurately reported.
4. A change in income, the need for child care, or household composition was not reported within 10 days of the change and the change would have resulted in a lesser benefit received.
5. The worker did not timely act upon reported information or entered incorrect information into the CARES system that resulted in an eligibility related overpayment.

In this particular case, petitioner was previously eligible for CC based upon the fact she was caring for a foster child and her income was excluded. When she adopted [REDACTED] on July 21, 2015, that exclusion no

longer applied. However, as petitioner did not notify the county agency of that adoption, the county agency continued to exclude petitioner's income and certify her eligible for CC benefits.

At hearing the county agency explained petitioner was not eligible for CC once her income was included in the calculation. Therefore, the agency concluded petitioner had been overissued CC for the period of July 26, 2015 – January 31, 2016.

Petitioner herself did not directly dispute she had not reported the adoption of the children to the respondent, but asserted she had reported the adoption to her social worker; she did not understand that her duty to report extended any further. She also testified that she had been repeatedly informed that her daughter would remain eligible for CC assistance for a period of 5 years following the adoption.

I reviewed the Notice provided to petitioner dated three days following finalization of [REDACTED]'s adoption. The notice informs petitioner of her need to report certain changes immediately, and other changes within 10 calendar days. Notably, not a single listed change addresses adoption. More notably, not a single listed change even references the vague notion of change in "household composition." I also find it telling that the respondent submitted an email exhibit referencing petitioner's social worker by name and identifying her as the "social worker on the file." See, Exhibit 3. Unfortunately, despite the respondent's apparent knowledge of petitioner's social worker, the adoption information did not transfer to petitioner's CC file.

While I would be hard pressed to determine that this overpayment resulted from petitioner's error, CC overpayments are recoverable regardless of who was at fault. The respondent has established that an overpayment occurred here after [REDACTED] was adopted. Based upon the fact that petitioner was not eligible for CC benefits after adopting [REDACTED], and CC payments continued to be issued on her behalf, I must conclude the county agency has correctly sought a recovery in this case.

CONCLUSIONS OF LAW

That petitioner lost eligibility for CC benefits after July 24, 2016, which resulted in an overpayment of CC benefits as the agency was required to include her income in the calculation of CC eligibility once she had adopted [REDACTED], pursuant to *Wisconsin Child Care Manual*, Chapter 1.8.1.

NOW, THEREFORE, it is ORDERED

That petitioner's appeal is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

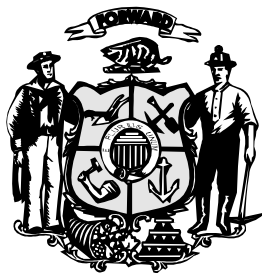
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 4th day of November, 2016

\s _____
Peter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on November 4, 2016.

La Crosse County Department of Human Services
Public Assistance Collection Unit
Child Care Fraud